IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CARMEL WALKER, DOROTHY ABERNATHY, JUDITH BAKER, CYNTHIA BARLOW, KRISTI BOWMAN, MARY CAHOON, BEVERLY CASE, TONY COLCLASURE, RANDY COLLINS, KAREN GALL, MACK GREEN, CARLA HULL, CINDY JONES, EVE GAVIN, AS REPRESENTATIVE FOR BETTY LUMPKIN DECEASED, MARLENE MARSHALL, DANIEL MCHALE, TERRI MEYER, JAREEN MOSES, KIM NOVAK, GAYE OAKES, JESSICA PRATT, AS REPRESENTATIVE FOR BOBBY PRATT, DECEASED, JULIE REICHENBACH, STEVEN REICHENBACH, CASPER REUTEBUCH, LEISA SANDERS, JON STEWART, STEPHEN VIVENS, and HENRY WEEKS,	)	
Plaintiffs,	)	
vs.	)	Case No. 4:17-cv-00789
ASTRAZENECA PHARMACEUTICALS LP and ASTRAZENECA LP,	)	
Defendants.	)	

NOTICE OF REMOVAL

Defendants AstraZeneca Pharmaceuticals LP and AstraZeneca LP (collectively, “Defendants”), under 28 U.S.C. §§ 1332, 1441, and 1446, remove the action styled *Walker, et al. v. AstraZeneca Pharmaceuticals LP, et al.*, No. 1622-CC11589, from the Missouri Circuit Court, 22nd Judicial District, to the United States District Court for the Eastern District of Missouri, Eastern Division. As grounds for removal, Defendants state:

INTRODUCTION

1. On December 19, 2016, Plaintiffs filed their complaint in the Missouri Circuit Court. Plaintiffs seek damages as a result of alleged conduct by Defendants arising from the alleged ingestion of "proton pump inhibitors ('PPIs')." Petition ¶ 2. Plaintiffs allege that they "were and still are caused to suffer serious and dangerous side effects including, serious, permanent, and life-threatening kidney damage and other severe injuries which are permanent and lasting in nature, physical pain and mental anguish, diminished enjoyment of life, expenses for hospitalization and medical treatment, and loss of earnings." Petition ¶ 77. They bring claims for strict product liability, intentional infliction of emotional distress, negligent infliction of emotional distress, common law fraud, negligence, negligent misrepresentation, fraudulent misrepresentation, breach of express and implied warranties, and wrongful death.

2. Plaintiffs are, and at the time of the filing of this action were, citizens of one of the following states: Alabama, Arkansas, Delaware, Florida, Illinois, Indiana, Missouri, Texas, Washington, and Wisconsin. Petition ¶¶ 3-30. Of the 28 Plaintiffs, three are citizens of Delaware (collectively, the "Delaware Plaintiffs"). *Id.* For the reasons set forth below, the Delaware Plaintiffs do not defeat federal diversity jurisdiction in this action.

3. Defendant AstraZeneca Pharmaceuticals LP is, and at the time of the filing of this action was, a Delaware limited partnership with its principal place of business in Delaware. Partnerships assume the citizenship of their general and limited partners. *See Carden v. Arkoma Assoc.*, 494 U.S. 185, 195 (1990) (partnerships assume the citizenship of their general and limited partners). AstraZeneca Pharmaceuticals LP's general partner is, and at the time of the filing of this action was, AstraZeneca AB, a Swedish corporation with its principal place of business in Sweden. AstraZeneca Pharmaceuticals LP's sole limited partner is, and at the time of

the filing of this action was Zeneca Inc., a Delaware corporation with its principal place of business in Delaware. Thus, for purposes of determining diversity jurisdiction in this action, AstraZeneca Pharmaceuticals LP is deemed to be a citizen of Delaware and Sweden.

4. Defendant AstraZeneca LP is, and at the time of filing of this action was, a Delaware limited partnership. AstraZeneca LP's sole partner is, and at the time of the filing of this action was, AstraZeneca Pharmaceuticals LP. As set forth in Paragraph 3, *supra*, AstraZeneca Pharmaceuticals LP is deemed to be a citizen of Delaware and Sweden. Thus, for purposes of determining diversity jurisdiction in this action, AstraZeneca LP is deemed to be a citizen of Delaware and Sweden.

5. Contemporaneously with this Notice of Removal, Defendants are filing a motion to dismiss the Delaware Plaintiffs' claims for lack of personal jurisdiction.[1] As set forth more fully in Defendants' motion to dismiss, it is straightforward to conclude that Missouri courts lack personal jurisdiction over Defendants with respect to the Delaware Plaintiffs' claims. Moreover, it is within this Court's discretion to decide personal jurisdiction before ruling on the question of subject matter jurisdiction. Thus, in the interests of efficiency and judicial economy, Defendants request that this Court first dismiss the Delaware Plaintiffs' claims for lack of personal jurisdiction, thereby creating complete diversity of citizenship.

6. However, even if this Court were to begin by assessing subject matter jurisdiction, removal is still proper. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441 because this is a civil action in which there is complete diversity of citizenship between all properly joined parties and the amount in controversy exceeds $75,000, exclusive of interest

1. Defendants are moving to dismiss the claims of all out-of-state plaintiffs. *See* Defendants' Motion to Dismiss (A) Nonresident Plaintiffs for Lack of Personal Jurisdiction, and (B) Petition as a Whole Pursuant to Rule 12(b)(6), filed contemporaneously herewith. However, for purposes of this Court's removal analysis, it is only necessary to decide the motion as against the Delaware Plaintiffs.

and costs. As explained more fully below, this Court should dismiss the Delaware Plaintiffs' claims under the doctrine of fraudulent joinder because Missouri courts lack personal jurisdiction over Defendants with respect to those claims. Alternatively, this Court should disregard the presence of the Delaware Plaintiffs under the doctrine of fraudulent misjoinder because their claims do not arise out of the same transaction or occurrence as the claims of the other plaintiffs.

GROUNDS FOR REMOVAL

I. This Court Should First Decide Personal Jurisdiction and Dismiss the Delaware Plaintiffs' Claims, Thereby Creating Complete Diversity.

7. This Court has discretion to decide personal jurisdiction before ruling on the question of subject matter jurisdiction. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 588 (1999) (concluding that a district court has discretion to resolve the issue of personal jurisdiction before subject matter jurisdiction in cases removed from state court, and affirming the trial court's decision to do so when the case presented a "straightforward" question of personal jurisdiction and a "difficult" question of subject matter jurisdiction).

8. This Court as well as other federal courts have addressed personal jurisdiction before subject matter jurisdiction where, as here, the "personal jurisdiction question is straightforward, while the issue of subject matter jurisdiction is more complicated, due to the doctrine of fraudulent misjoinder." *See, e.g.*, *Addelson v. Sanofi*, 4:16-cv-01277-ERW, 2016 WL 6216124, at *2 (E.D. Mo. Oct. 25, 2016) (dismissing a non-Missouri plaintiff on personal jurisdiction grounds and denying remand as to the claims of the remaining diverse plaintiff); *In re Bard IVC Filters Prods. Liab. Lit.*, MDL No. 15-2641, 2016 WL 6393596, at *6 (D. Ariz. Oct. 28, 2016) (finding that court lacked personal jurisdiction as to non-Missouri plaintiffs and denying remand in case originally filed in the City of St. Louis); *In re Zofran (Ondansetron) Prods. Liab. Litig.*, MDL No. 1:15-md-2657, 2016 WL 2349105, at *5 (D. Mass. May 4, 2016)

(dismissing non-Missouri plaintiffs for lack of personal jurisdiction and denying remand in case originally filed in the City of St. Louis); *In re Testosterone Replacement Therapy Prods. Liab. Litig.*, 164 F. Supp. 3d 1040, 1049-50 (N.D. Ill. 2016) (dismissing non-diverse plaintiff for lack of personal jurisdiction and denying remand in case originally filed in the City of St. Louis).

9. As will be explained more fully in Defendants' contemporaneous motion to dismiss, incorporated herein by reference, it is straightforward to conclude that this Court has no basis to exercise personal jurisdiction over Defendants with respect to the Delaware Plaintiffs' claims. Thus, in the interest of judicial economy and efficiency, this Court should first dismiss the Delaware Plaintiffs' claims on personal jurisdiction grounds, thereby creating complete diversity between the remaining plaintiffs and Defendants. *See Ruhrgas*, 526 U.S. at 588; *Addelson*, 2016 WL 6216124, at *2; *In re Bard*, 2016 WL 6393596, at *6; *In re Zofran*, 2016 WL 2349105, at *5; *In re Testosterone*, 164 F. Supp. 3d at 1049-50.

A. Missouri Courts Lack Personal Jurisdiction Over Defendants with Respect to the Delaware Plaintiffs' Claims.

10. Each plaintiff in a multi-plaintiff action must establish personal jurisdiction over each defendant. *See Sun World Lines, Ltd. v. March Shipping Corp.*, 585 F. Supp. 580, 584–85 (E.D. Mo. 1984) ("[P]ersonal jurisdiction must be valid as to each and every cause of action in a complaint. Those causes of action which do not provide a sufficient basis for *in personam* jurisdiction must be dismissed even if other claims have such a basis.") (internal citations omitted), *aff'd*, 801 F.2d 1066 (8th Cir. 1986); *Addelson*, 2016 WL 6216124, at *3 n.3. The Delaware Plaintiffs bear the burden to allege facts that demonstrate this Court's jurisdiction. *See Express Scripts, Inc. v. Care Continuum Alliance, Inc.*, No. 4:10-cv-2235-CDP, 2011 WL 2199967, at *1 (E.D. Mo. June 7, 2011).

11. Plaintiffs' petition contains no specific facts underlying the Delaware Plaintiffs' alleged injuries that would support jurisdiction over their unrelated claims in Missouri courts. None of the Delaware Plaintiffs allege that they suffered their alleged injuries in Missouri, that they purchased the medications at issue in Missouri, or that they have ever stepped foot within the borders of the state. As such, none can establish personal jurisdiction over Defendants in this or any Missouri Court. *See J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780, 2797-98 (2011) (holding that corporations are subject to specific jurisdiction only when the claims asserted are related to a defendant's contacts with the forum state).

12. Under Missouri law, personal jurisdiction can only be exercised to the extent permitted by the Due Process Clause of the United States Constitution. *See, e.g.*, *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014); *May Dep't Stores Co. v. Wilansky*, 900 F. Supp. 1154, 1159 (E.D. Mo. 1995). There are two ways to establish personal jurisdiction—"specific jurisdiction" and "general jurisdiction." None of the Delaware Plaintiffs can establish specific jurisdiction in Missouri because none allege that their injuries occurred in Missouri, nor do any allege that any other event giving rise to their claims occurred in the state. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984). "It has been said that when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, the State is exercising 'specific jurisdiction' over the defendant."). The proper inquiry is whether the Delaware Plaintiffs' claims arise out of any systemic and continuous contacts with Missouri. *See id.*; *see also Goodyear Dunlop Tire Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011) ("Specific jurisdiction . . . depends on an affiliation[n] between the forum and the underlying controversy." (second alteration in original) (internal quotation omitted)). The Delaware Plaintiffs do not allege that their claims

involve any contact with Missouri and, as such, do not establish specific jurisdiction over Defendants.

13. Missouri courts likewise lack general jurisdiction over the Delaware Plaintiffs' claims. Under the Supreme Court's decision in *Daimler*, a plaintiff who seeks to establish general jurisdiction must show that a defendant's contacts with the chosen forum are so extensive "as to render them essentially at home in the forum State." 134 S. Ct. at 754 (internal quotations omitted). Defendants are all citizens of states other than Missouri or of a foreign country, and, as such, the Delaware Plaintiffs must demonstrate that this case constitutes the "exceptional" case in which a defendant's "'affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State.'" *Id.* (quoting *Goodyear*, 131 S. Ct. at 2851).

14. In *Daimler*, the Supreme Court clarified that there are limitations on where defendants, including both persons and multi-national corporations, are subject to general personal jurisdiction. 134 S. Ct. at 760. Unlike specific jurisdiction, "[g]eneral jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* at 762 n.20. The Supreme Court has made "clear that only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." *Id.* at 760. For a corporation, this "limited set of affiliations" justifying the exercise of general jurisdiction is generally held to be the state of incorporation and the corporation's principal place of business. *Id.* The simple fact that Defendants have conducted business in Missouri is not sufficient to render them subject to general jurisdiction in the state. *Daimler*, 134 S. Ct. at 757 ("Although the placement of a product into the stream of commerce 'may bolster an affiliation germane to

specific jurisdiction,' . . . such contacts 'do not warrant a determination that, based on those ties, the forum has *general* jurisdiction over a defendant'" (quoting *Goodyear*, 131 S. Ct. at 2857) (emphasis in original)).

15. Courts in this district have likewise noted the limitations on the exercise of general jurisdiction over foreign defendants. *See Neeley v. Wyeth*, No. 4:11-cv-00325-JAR, 2015 WL 1456984 (E.D. Mo. March 30, 2015); *see also Beard v. Smithkline Beecham Corp.*, No. 4:15-cv-1833-RLW, 2016 WL 1746113, at *2 (E.D. Mo. May 3, 2016). In *Neeley*, the court rejected the contention, that the mere "continuous and systematic" contacts justified the exercise of general jurisdiction over an out of state defendant. *See id.* at *2. The court went on to conclude that, because the out of state defendants were not incorporated in Missouri and did not have their principal place of business within the state, they were not subject to general jurisdiction in Missouri courts. *Id.* at *3.

16. Like the *Neeley* court, other courts in this district have recognized the limitations imposed by *Daimler* on the exercise of personal jurisdiction. *See Addelson*, 2016 WL 6216124. In *Addelson*, the court granted the defendants' motion to dismiss the non-resident plaintiffs' claims for lack of personal jurisdiction, noting that plaintiffs' allegations—that defendants distributed, marketed, promoted, and sold Taxotere® in St. Louis and Missouri—were "not enough to establish general jurisdiction as outlined in *Daimler*." *Id.* at *3; *see also Barthomome v. Pfizer, Inc.*, No. 4:15-cv-788-HEA, 2016 WL 366795, at *2 (E.D. Mo. Jan. 29, 2016) ("The mere marketing of Zoloft in Missouri does not make Pfizer's connection with the state continuous and systematic as to render it at home here. Merely establishing that a corporation regularly conducts business in a forum is not sufficient to confer general jurisdiction." (internal citations omitted)); *accord Keeley v. Pfizer Inc.*, No. 4:15-cv-00583, 2015 WL 3999488, at *4

(E.D. Mo. July 1, 2015) (granting motion to dismiss over out-of-state defendant for lack of personal jurisdiction); *see also Clarke v. Pfizer Inc.*, No. 4:15-cv-01072-AGF, 2015 WL 5243876, at *2 (E.D. Mo. Sept. 8, 2015) ("Even if Defendants marketed and sold Zoloft in Missouri, that does not make their connections with the state 'continuous and systematic as to render them essentially at home' here." (quoting *Goodyear*, 131 S. Ct. at 2851)).

17. As set forth in their accompanying motion and supporting Affidavit, Defendants do not have their principal places of business or headquarters in Missouri, and do not have any affiliations with the state that are so extensive as to render them "at home" in this state. *Daimler*, 134 S. Ct. at 754. The mere fact that Defendants allegedly sold, advertised, or promoted a product in this state is insufficient to support the exercise of general jurisdiction over any defendant. *See id.* at 757; *Addelson*, 2016 WL 6216124, at *3; *Barthomome*, 2016 WL 366795, at *2.

18. Because this Court lacks personal jurisdiction over the Delaware Plaintiffs' claims, this Court should dismiss their claims, which would create complete diversity of citizenship. *Addelson*, 2016 WL 6216124, at *2; *In re Bard*, 2016 WL 6393596, at *6; *In re Zofran*, 2016 WL 2349105, at *5; *In re Testosterone*, 164 F. Supp. 3d at 1049-50.

B. Dismissing the Delaware Plaintiffs' Claims on Straightforward Personal Jurisdiction Grounds Will Eliminate the Need to Conduct a More Complicated Analysis of Subject Matter Jurisdiction.

19. Dismissing the Delaware Plaintiffs' claims for lack of personal jurisdiction would create complete diversity between the remaining plaintiffs and Defendants. Accordingly, this Court could retain jurisdiction on clear, straightforward grounds. This Court would not have to reach the more complicated issues of fraudulent joinder and misjoinder that would otherwise be central to the subject matter jurisdiction analysis. Moreover, as explained more fully below, Defendants' fraudulent joinder argument is based, in part, on the contention that this Court lacks

personal jurisdiction over the Delaware Plaintiffs' claims. Thus, even if this Court addresses subject matter jurisdiction first, it will necessarily confront the question of personal jurisdiction. Therefore, to promote judicial economy, this Court should first address the issue of personal jurisdiction and dismiss the Delaware Plaintiffs' claims. *Addelson*, 2016 WL 6216124, at *2; *In re Bard*, 2016 WL 6393596, at *6; *In re Zofran*, 2016 WL 2349105, at *5; *In re Testosterone*, 164 F. Supp. 3d at 1049-50.

II. Removal Is Proper Because This Court Has Subject Matter Jurisdiction Pursuant to 28 U.S.C. §§ 1332 and 1441.

20. Even if this Court were to begin by assessing subject matter jurisdiction, removal is still proper. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441 because this is a civil action in which there is complete diversity of citizenship between all properly joined parties and the amount in controversy exceeds $75,000, exclusive of interest and costs.

A. There Is Complete Diversity of Citizenship Between All Properly Joined Parties.

21. Complete diversity of citizenship exists between Defendants and all but three of the plaintiffs under 28 U.S.C. § 1332. As explained more fully below, the three Delaware Plaintiffs' claims should be disregarded for purposes of this Court's subject matter jurisdiction analysis pursuant to the doctrines of fraudulent joinder and fraudulent misjoinder. The Delaware Plaintiffs' claims have been fraudulently joined because Missouri courts lack personal jurisdiction over Defendants with respect to those claims. The Delaware Plaintiffs' claims have been fraudulently misjoined because they do not arise out of the same transaction or occurrence as the claims of the other plaintiffs.

i. There Is Complete Diversity of Citizenship Because the Delaware Plaintiffs' Claims Have Been Fraudulently Joined.

22. Joinder is fraudulent when "under governing state law . . . the complaint does not state a cause of action against the non-diverse defendant." *Moore v. Helget Gas Prods., Inc.*, No. 4:14-cv-1292-CEJ, 2014 WL 6632342, at *1 (E.D. Mo. Nov. 21, 2014) (citing *Witherspoon v. Bayer HealthCare Pharmaceuticals, Inc.*, No. 4:13-cv-01912-CEJ, 2013 WL 6069009, at *2 (E.D. Mo. Nov. 18, 2013). The Delaware Plaintiffs are fraudulently joined because their claims may not be brought under the United States Constitution in the courts of Missouri.

23. As set forth above and as will be set forth in Defendants' motion to dismiss, the Delaware Plaintiffs cannot recover for their claims in the courts of Missouri because they cannot establish personal jurisdiction over Defendants in this State. Defendants' contacts with Missouri do not subject them to general personal jurisdiction in Missouri. *See Daimler*, 134 S. Ct. at 760. Further, the Delaware Plaintiffs have not alleged any facts justifying the exercise of specific jurisdiction over Defendants as to their claims, as they are unrelated to any contact with the State of Missouri. *See J. McIntyre Machinery, Ltd.*, 131 S. Ct. at 2797–98. Indeed, the Delaware Plaintiffs fail to even identify the product(s) at issue, alleging merely that each "suffered damages as a direct result of PPI ingestion." Petition ¶¶ 15, 19, 22. There are scores of different PPI products available for sale in the United States in addition to the Defendants' products.

24. Therefore, the Delaware Plaintiffs have not stated a cause of action against Defendants under Missouri law, and their claims should be dismissed and ignored for purposes of the subject matter jurisdiction analysis. *See, e.g., Filla v. Norfolk Southern Ry. Co.*, 336 F.3d 806, 810 (8th Cir. 2003) (holding that a party has been fraudulently joined—and must be ignored in any subject-matter jurisdiction analysis—"if it is *clear* under governing state law that the complaint does not state a cause of action" with regard to the non-diverse party) (emphasis in

original); *see also, e.g.*, *Murphy v. Aurora Loan Services, LLC*, 699 F.3d 1027, 1031 (8th Cir. 2012) (finding that the plaintiffs' claims "lacked a reasonable basis in fact and law" and affirming that the claims had been fraudulently joined).

ii. There Is Complete Diversity of Citizenship Because the Delaware Plaintiffs' Claims Have Been Fraudulently Misjoined.

25. The procedural (fraudulent) misjoinder doctrine is intended to ensure that a defendant's statutory right to remove cannot be subverted by the improper joinder of parties. *See Tapscott*, 77 F.3d at 1360. Under the doctrine, federal diversity jurisdiction exists "where diversity is destroyed only through misjoinder of parties." *Asher v. 3M*, No. 04-CV-522-KKC, 2005 WL 1593941, at *7 (E.D. Ky. June 30, 2005). "Misjoinder of parties occurs when a party fails to satisfy the conditions for permissive joinder under Rule 20(a)." *In re Rezulin Prods. Liab. Litig.*, 168 F. Supp. 2d 136, 144 (S.D.N.Y. 2001). *Accord*, *In re Propecia (Finasteride) Prod. Liab. Litig.*, No. 12-MD-331(JG)(VVP), 2013 WL 3729570, at *3 (E.D.N.Y. May 17, 2013) (finding procedural misjoinder as to suit removed from Missouri state court where "the injuries . . . will greatly vary from plaintiff to plaintiff based on factors like age, physical state at the time of taking the drug, and dosage"); *In re Fosamax (Alendronate Sodium) Prods. Liab. Litig.*, MDL 2243, 2012 WL 1118780, at *4 (D.N.J. Apr. 3, 2012) (finding procedural misjoinder where plaintiffs "allege such unspecific injuries as to make it impossible to determine how the Plaintiffs share any connection" and "given the complicated causation questions that pervade drug product liability claims, Plaintiffs' claims will require divergent questions of law and fact").[2] Accordingly, procedural misjoinder applies where, as here, the plaintiffs improperly join

2. The Eighth Circuit has "[made] no judgment on the propriety of the" fraudulent misjoinder doctrine and has "decline[d] to either adopt or reject it." *In re Prempro Prods. Liab. Litig.*, 591 F.3d 613, 620–25 (8th Cir. 2010) (concluding under record in that case that the "alleged misjoinder . . . [was] not so egregious as to constitute fraudulent misjoinder").

different claims that do not arise "out of the same transaction, occurrence, or series of transactions or occurrences" and give rise to common questions of law or fact. Fed. R. Civ. P. 20(a); *see also* Mo. Sup. Ct. R. 52.05 (explaining that, in order for plaintiffs to join their claims, they must each allege a "right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action"); *see also In re Fosamax*, 2012 WL 1118780, at *3 (stating that "Missouri's permissive joinder rule is substantively identical to Fed. R. Civ. P. 20(a)") (footnote omitted). Where procedural misjoinder applies, a court should sever the improperly joined claims into separate and distinct cases.[3]

26. Among the differences of these Plaintiffs' claims are their unique medical histories, including use of the product and risk profile, the labeling as read by their treating physicians, the duration of use of the products, their particular injuries alleged, the cause of their alleged injuries, and other individual issues. Each plaintiff received individualized medical care, provided by different medical providers in different states, before and after the alleged injuries. The laws of different states apply to each of their underlying tort claims.

27. The impropriety of Plaintiffs' joinder also has precedent under Missouri law. For example, Missouri trial courts have noted that "a plaintiff's claim depends on particular characteristics such as the plaintiff's medical history, her particular treatment, and her injury" and that "[c]ausation must be individually determined based on the injury alleged and other

3. Rule 21 also provides that a court "may at any time, on just terms, add or drop a party." Fed. R. Civ. P. 21. Case law states that "even in the absence of misjoinder, a court may issue an order pursuant to Rule 21 to structure a case for the efficient administration of justice." *New Life Evangelistic Center, Inc. v. City of St. Louis, Mo.*, No. 4:14-CV-00395-JAR, 2015 WL 2383499, at *11 (E.D. Mo. May 19, 2015); *True Fitness Technology, Inc. v. Samsara Fitness, LLC*, No. 4:14-CV-1930-HEA, 2015 WL 3795862 (E.D. Mo. June 18, 2015); *Smith v. Union Carbide*, 2015 WL 191718 (Mo. Cir. Ct. June 12, 2015). There is "an unarticulated premise that the underlying purposes of Rules 19, 20 and 21 is to allow the district court itself to exercise its power to alight the parties and the issues presented in a single lawsuit in a way that will foster judicial efficiency, while protecting parties against prejudice." *Id.*

factors." *Ballard v. Wyeth*, No. 042-07388A, slip op. at 3 (Mo. Cir. Ct. St. Louis Aug. 24, 2005). Courts have concluded that severance is proper and the fact that a plaintiff ingested the same product "is not sufficient to meet the 'transaction or occurrence' requirement." *Id.* at 4; *see also Brown v. Walgreens Co.*, No. 1022-CC00765, slip op. at 4 (Mo. Cir. Ct. St. Louis Nov. 15, 2010).

28. Finally, the misjoinder of the Delaware Plaintiffs in an attempt to defeat diversity jurisdiction is particularly egregious in light of the fact that there is no personal jurisdiction over the Delaware Plaintiffs' claims.

B. The Amount-in-Controversy Requirement Is Satisfied.

29. Plaintiffs seek "in excess of $25,000" for each of their twelve causes of action. Other complaints alleging similar injuries were filed in federal court and seek in excess of the jurisdictional minimum for federal diversity jurisdiction. *See e.g.*, *Foster v. AstraZeneca Pharmaceuticals LP et al.*, 4:16-cv-01106-RK (W.D. Mo., Oct. 14, 2016) at ¶ 3-4 (alleging "injuries to his kidneys including Chronic Kidney Disease"). Moreover, Plaintiffs seek punitive damages (Petition p. 27), which are included in the calculation of the amount in controversy. *See Bell v. Preferred Life Assur. Soc'y*, 320 U.S. 238, 240 (1943); *Ross v. First Family Fin. Servs., Inc.*, 2002 WL 31059582, at *8 (N.D. Miss. Aug. 29, 2002) ("unspecified claims for punitive damages sufficiently serve to bring the amount in controversy over the requisite threshold set out in 28 U.S.C. § 1332"). Accordingly, the amount in controversy exceeds $75,000.00, exclusive of interest and costs, as required for original jurisdiction in this Court under 28 U.S.C. § 1332(b).[4]

4. In addition, if one plaintiff's claims exceed the jurisdictional minimum, the court has supplemental jurisdictional over claims of other plaintiffs. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 558–59 (2005).

C. Defendants Have Satisfied the Procedural Requirements for Removal.

30. Pursuant to 28 U.S.C. § 1446(a), and Local Rule 2.03, the Defendants attach as Exhibit A a copy of the complete file from state court including summons and return of summons (if any) for all defendants.

31. Defendants AstraZeneca Pharmaceuticals LP and AstraZeneca LP were served with a copy of the Complaint on January 26, 2017. Removal is timely because the Notice of Removal is being filed no later than 30 days after service of the Complaint on the Defendants.

32. This case is properly removed to this District and Division, *see* 28 U.S.C. § 1441(a)(2), because this District and Division embrace the Circuit Court of the City of St. Louis, the forum in which the removed action was pending. *See* 28 U.S.C. § 105(a)(1).

33. No defendant is a citizen of the State of Missouri, the State where this action was brought. *See* 28 U.S.C. § 1441(b).

34. The Defendants will give written notice of the filing of this Notice of Removal and will file a copy of this notice with the Clerk of the Missouri Circuit Court, as required by 28 U.S.C. § 1446(d).

35. The Defendants shall file, as a separate document, a Notice to the Plaintiffs of Removal, informing them of the removal of the state court case.

36. If any question arises as to the propriety of the removal of this action, the Defendants request the opportunity to brief any disputed issues and to present oral argument in support of their position that this action is properly removable.

37. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of any defendant's right to assert any defense or affirmative matter, including, without limitation, the defenses of (a) lack of personal jurisdiction; (b) improper venue; (c)

insufficiency of process; (d) insufficiency of service of process; (e) failure to state a claim; (f) failure to join an indispensable party(ies); (g) lack of standing; or (h) any other procedural or substantive defense available under state or federal law.

38. Defendants reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, the Defendants remove this case from the Missouri Circuit Court, 22nd Judicial Circuit, to the United States District Court for the Eastern District of Missouri pursuant to 28 U.S.C. §§ 1441 and 1446, and state that no further proceedings may be had in the state action.

Respectfully Submitted,

FOX GALVIN, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February, 2017, a copy of the foregoing was electronically filed using the Court's CM/ECF system, and served by U.S. Mail, postage prepaid, to the following counsel of record:

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